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| APPLICATION NO.                                                                               | FILING DATE | FIRST NAMED INVENTOR   | ATTORNEY DOCKET NO.          | CONFIRMATION NO.       |
|-----------------------------------------------------------------------------------------------|-------------|------------------------|------------------------------|------------------------|
| 10/808,683                                                                                    | 03/25/2004  | Jeroen Siebrand Wellen | Wellen 6                     | 6204                   |
| 46363                                                                                         | 7590        | 08/19/2009             |                              |                        |
| WALL & TONG, LLP/<br>ALCATEL-LUCENT USA INC.<br>595 SHREWSBURY AVENUE<br>SHREWSBURY, NJ 07702 |             |                        | EXAMINER<br>PASCAL, LESLIE C |                        |
|                                                                                               |             |                        | ART UNIT<br>2613             | PAPER NUMBER           |
|                                                                                               |             |                        | MAIL DATE<br>08/19/2009      | DELIVERY MODE<br>PAPER |

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/808,683

**Applicant(s)**

WELLEN, JEROEN SIEBRAND

**Examiner**

Leslie Pascal

**Art Unit**

2613

**Period for Reply** -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 11 May 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1,3,4,6-9,11 and 13-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 8,9,11 and 13-17 is/are allowed.
- 6) ☒ Claim(s) 1,3,4,18 and 19 is/are rejected.
- 7) ☒ Claim(s) 6-7,20 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

1. This application has been assigned to a different examiner. Please address all correspondence to Leslie Pascal.
2. In view of the applicants' arguments in the Appeal Brief, the following rejection has been made. New art has been discovered and used. It is regretted that this rejection was not made earlier.
3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1 and 3-4 and 18-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Barber et al (6014477) in view of Tomonobu et al.

Barber et al teach using a switch means in the upstream direction in order to ensure that subscribers are only transmitting in the proper time slot. Barber et al teach an optical network which has a central office (figure 14, 141 and figure 15) a passive all optical downstream path (claim 16, passive downstream path) having a first termination (where 143 is input into 141) and a second termination at the customer premises (where 145 is input into 142). He teaches that in the upstream direction he has an active element, which would make the upstream path an active upstream path. This is read on the switch means which is actively controlled for the upstream path in order to control the upstream path (see claim 16). Although he does not specifically teach that the upstream and downstream paths are separate, it is well known to have the paths separate or bidirectional as taught by Tomonobu et al (see figures 12 and 13 of

Tomonobo et al). It would have been obvious to use two separate paths in the system of Barber et al in order to avoid crosstalk noise caused by traveling on a long path in opposite directions since it is well known to use separate paths as taught by Tomonobo et al. in regard to claims 3-4, see element 1522 in figure 15.

5. Claims 1 and 3-4 and 18-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tomonobu et al (JP2002-141927).

Tomonobu et al teach that it is well known to have an active path in one direction (downstream, not amplifiers in downstream and not in upstream) and a passive path in the other direction (upstream). See figures 4 and 9-12. Although Tomonobu et al teaches that the active path is in the downstream and not the upstream, as claimed, and that the passive path is in the upstream and not the downstream, as claimed; Tomonobu et al provide a clear teaching that it is well known to have active elements in one direction and passive elements in the opposite direction. For example, it would have been obvious to have an all passive downstream path if the power of the signal from the central office was strong enough to support splitting. It would have been obvious to use an active element (amplifier) in the upstream direction if the signals output by subscribers (which may not have a light source as powerful as at the central office) need to be boosted before being received by the central office. Not requiring amplifiers in the downstream direction would reduce the need for amplifiers in the downstream direction, in which extra devices can add to cost in the system. This would also reduce noise caused by the amplifiers and the possibility of failure of extra parts.

6. Claims 8-9, 11 and 13-17 are allowed.

7. Claims 6-7 and 20 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.
8. The following is a statement of reasons for the indication of allowable subject matter: The closest prior art of record does not teach an optical system which has a passive communication path in a downstream direction and an active path in the upstream direction in which the upstream direction has a switch device for aggregating and multiplexing upstream signals.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Leslie Pascal whose telephone number is 571-272-3032. The examiner can normally be reached on Monday- Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kenneth Vanderpuye can be reached on 571-272-3078. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Leslie Pascal/  
Primary Examiner  
Art Unit 2613